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# Housing Issues in the 111<sup>th</sup> Congress

Updated January 10, 2012

**Congressional Research Service**

<https://crsreports.congress.gov>

R41616

## Summary

Housing issues related to the recent turmoil in U.S. housing markets, as well as perennial issues related to the housing needs of low-income individuals and families, were prominent in the 111<sup>th</sup> Congress. The recent recession that was, in part, both a cause and a result of issues in the housing finance system put legislation designed to address current foreclosures and prevent a future crisis on the congressional agenda. At the same time, the 111<sup>th</sup> Congress faced questions about how best to meet the affordable housing needs of low-income and vulnerable populations, particularly as unemployment climbed and the economy worsened. While the recession officially ended during the first session of the 111<sup>th</sup> Congress, housing markets in many parts of the country continued to experience the effects of an economic downturn. The 111<sup>th</sup> Congress considered a number of measures to shore up housing markets and to address issues related to both housing finance and housing assistance for low-income populations. While a number of measures were enacted, other issues were left unresolved at the end of the 111<sup>th</sup> Congress.

This report summarizes housing issues that were considered in the 111<sup>th</sup> Congress. The report divides issues into three main sections: “Housing Finance and Homeownership,” “Housing for Low-Income Individuals and Families,” and “Other Issues.”

Within the realm of housing finance and homeownership, the 111<sup>th</sup> Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act, P.L. 111-203). While not exclusively focused on housing, the Dodd-Frank Act did include foreclosure prevention-related provisions and changes to mortgage origination standards and practices. Notably absent from the Dodd-Frank Act were changes to the way in which the Government Sponsored Enterprises (GSEs)—Fannie Mae and Freddie Mac—are structured and their role in the mortgage market, although the 111<sup>th</sup> Congress did feature discussions regarding reform of the GSEs. The 111<sup>th</sup> Congress also enacted tax provisions meant to bolster housing markets by providing a tax credit for first-time homebuyers. Foreclosure issues and FHA reform were other issues considered by the 111<sup>th</sup> Congress.

Congress also enacted laws that made changes to existing programs that provide housing assistance to low-income individuals and families. The Homeless Assistance Grants, administered by the Department of Housing and Urban Development (HUD) were amended to give communities greater flexibility in providing housing and services to homeless individuals (P.L. 111-22). The programs that fund housing for low-income seniors and individuals with disabilities (Section 202 and Section 811, respectively) also were changed to allow greater integration of funding from non-HUD sources in housing developments (P.L. 111-372 and P.L. 111-374). The 111<sup>th</sup> Congress also considered legislation related to housing assistance programs that was not ultimately enacted, including reform to HUD’s largest assistance programs: public housing and the Section 8 Housing Choice Voucher program.

In addition to these activities, the 111<sup>th</sup> Congress enacted the American Recovery and Reinvestment Act (P.L. 111-5). This legislation, aimed at stimulating the economy, provided additional appropriations to several HUD programs.

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## Introduction

During the first session of the 111<sup>th</sup> Congress, the economy officially exited its recent recession. However, the economy and housing markets across the country continued to feel the effects of an economic downturn that featured the largest decline in output, consumption, and investment and the largest increase in unemployment of any post-World War II recession.<sup>1</sup> The downturn was, in part, both a cause and a result of issues in the housing finance system and troubles in housing markets. During the downturn, home prices declined rapidly and home foreclosures reached record-high levels.<sup>2</sup> Given the prominent role housing played in this economic crisis, housing policy issues were active during the 111<sup>th</sup> Congress, as they had been in the 110<sup>th</sup> Congress.

In response to concerns about the magnitude of the economic downturn, the 110<sup>th</sup> Congress had enacted a sweeping economic stabilization program (P.L. 110-343), including the \$700 billion Troubled Asset Relief Program (TARP) that gave the government the authority to purchase or insure troubled assets owned by financial firms.<sup>3</sup> Some TARP funds were used for programs designed to reduce the number of home foreclosures, an issue that continued to be active during the 111<sup>th</sup> Congress. The 110<sup>th</sup> Congress had also enacted a major housing law, the Housing and Economic Recovery Act (P.L. 110-289), which included the authority for the federal government to place the Government Sponsored Enterprises (GSEs), Fannie Mae and Freddie Mac, into conservatorship (authority that the government promptly exercised).<sup>4</sup>

Given the landscape of a troubled financial system and troubled housing markets, the 111<sup>th</sup> Congress pursued an agenda of reforms to the U.S. financial system, including the housing finance system. The agenda also included legislation to support fragile housing markets and troubled homeowners. At the same time, the 111<sup>th</sup> Congress faced perennial questions about how best to meet the affordable housing needs of low-income and vulnerable populations and whether to make changes to the programs that comprise today's federal affordable housing system, particularly in light of rising budget deficits. In pursuing this agenda, the 111<sup>th</sup> Congress enacted a number of laws, ranging from reforming the mortgage origination process to reauthorizing federal homelessness assistance. In other areas, ranging from GSE reform to Section 8 voucher program reform, legislation was considered but not enacted before the end of the 111<sup>th</sup> Congress.

This report provides a brief summary of major housing issues that were considered in the 111<sup>th</sup> Congress. It does not provide comprehensive coverage of the issues or closely track active legislation, but it includes references to related CRS products that offer more detailed information and analysis.

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<sup>1</sup> See CRS Report R40198, *The 2007-2009 Recession: Similarities to and Differences from the Past*, by Marc Labonte.

<sup>2</sup> Mortgage Bankers Association, "Delinquencies and Foreclosures Continue to Climb in Latest MBA National Delinquency Survey," press release, May 28, 2009, <http://www.mortgagebankers.org/NewsandMedia/PressCenter/69031.htm>.

<sup>3</sup> CRS Report R41427, *Troubled Asset Relief Program (TARP): Implementation and Status*, by Baird Webel.

<sup>4</sup> CRS Report RL34623, *Housing and Economic Recovery Act of 2008*, coordinated by N. Eric Weiss.

# Housing Finance and Homeownership

## Government Sponsored Enterprises (GSEs)

Government Sponsored Enterprises (GSEs) are congressionally chartered financial institutions that are provided with special privileges to carry out narrow missions of critical public policy importance. In September 2008, the federal government placed two housing GSEs, Fannie Mae and Freddie Mac, in conservatorship and assumed management of them. This step was taken out of concern about their safety and soundness (including capitalization), housing market conditions at the time, the financial performance and condition of each company, the inability of the companies to fund themselves according to normal practices and prices, and the importance of the companies in supporting the residential mortgage market.<sup>5</sup> The housing GSEs have played a major role in U.S. housing markets. They have facilitated a secondary market for mortgage loans by buying home mortgages from the original lenders, repackaging them as mortgage-backed securities (MBSs), and either selling them or holding them in their own investment portfolios. In 2008, when they were placed in conservatorship, Fannie and Freddie had purchased about 80% of all new home mortgages in the United States.<sup>6</sup>

At the time they were placed in conservatorship, the Department of the Treasury (Treasury) signed separate contracts with Fannie Mae and Freddie Mac to purchase new issues of senior preferred stock as needed to keep each GSE solvent. Since then, Treasury has purchased more than \$150 billion in preferred stock, and separately, the Federal Reserve has purchased more than \$1 trillion in GSE-issued mortgage-backed securities. These actions and the risk to the economy represented by the more than \$5 trillion in combined mortgage guarantees of the three housing GSEs (the Federal Home Loan Bank System being the third) have meant increased congressional focus on how the GSEs are regulated and how they are operating.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act, P.L. 111-203) required the Secretary of the Treasury to present recommendations for ending the conservatorship of Fannie Mae and Freddie Mac by January 31, 2011.

For additional information, see CRS Report R40800, *GSEs and the Government's Role in Housing Finance: Issues for the 112<sup>th</sup> Congress*, by N. Eric Weiss; CRS Report RL34661, *Fannie Mae's and Freddie Mac's Financial Problems*, by N. Eric Weiss; and CRS Report R41432, *Mortgage Markets in Selected Developed Countries*, by N. Eric Weiss.

## Foreclosure Mitigation

Residential mortgage foreclosure rates in the U.S. began to rise sharply around the middle of 2006 and have remained high ever since. Widespread foreclosures are thought to have a number of negative consequences for individual homeowners, communities, and the economy as a whole. Given these negative effects, Congress has taken a number of steps to attempt to encourage mortgage holders and servicers to do more to prevent foreclosures or to facilitate foreclosure avoidance strategies over the past several years. However, there is an ongoing debate over how involved the government should be in preventing foreclosures or mitigating their impacts, particularly given that federal foreclosure mitigation initiatives may be costly to taxpayers and

<sup>5</sup> Federal Housing Finance Agency, "Statement of FHFA Director James B. Lockhart," press release, September 7, 2008, <http://www.fhfa.gov/webfiles/23/FHFAStatement9708final.pdf>.

<sup>6</sup> CRS Report RS22950, *Fannie Mae and Freddie Mac in Conservatorship*, by Mark Jickling.

may lead to moral hazard problems or raise concerns about the fairness of using taxpayer dollars to help one set of homeowners over others.

The 111<sup>th</sup> Congress enacted a number of laws that included provisions related to foreclosure mitigation. Some of these provisions amended existing foreclosure prevention programs, provided additional funding to such programs, or created new programs, while other provisions attempted to make it easier to modify mortgages or to address the effects of foreclosure. For example, the 111<sup>th</sup> Congress enacted the Helping Families Save Their Homes Act (P.L. 111-22), which, among other things, established protections for renters living in foreclosed properties, established a safe harbor for mortgage servicers that perform mortgage modifications that meet certain specifications, and made changes to the Hope for Homeowners program, which had been established by the 110<sup>th</sup> Congress. The 111<sup>th</sup> Congress also enacted a number of foreclosure-related provisions in the Dodd-Frank Act (P.L. 111-203). These included establishing a program to help homeowners who are having trouble paying their mortgages due to unemployment, and making changes to the Home Affordable Modification Program (HAMP), which was created by the Obama Administration using authority granted in the Emergency Economic Stabilization Act of 2008 (P.L. 110-343). Dodd-Frank also authorized funding for legal assistance for people facing foreclosure, but no funding had been appropriated for this purpose by the end of the 111<sup>th</sup> Congress.

The 111<sup>th</sup> Congress also provided additional funding for two other programs that had been established during the 110<sup>th</sup> Congress: the National Foreclosure Mitigation Counseling Program (NFMCP), which received appropriations in both the FY2009 and FY2010 Housing and Urban Development (HUD) appropriations acts, and the Neighborhood Stabilization Program (NSP), which received additional funding in both the American Recovery and Reinvestment Act (ARRA, P.L. 111-5) and the Dodd-Frank Act, both of which also included certain requirements for how the additional NSP funding could be used. (The NSP is discussed in further detail later in this report.) In addition, the 111<sup>th</sup> Congress considered a number of foreclosure-related initiatives that it did not enact, such as proposals to reform the bankruptcy code to allow judges to write down principal balances on primary residences.

For additional information, see CRS Report R40210, *Preserving Homeownership: Foreclosure Prevention Initiatives*, by Katie Jones; CRS Report RL34301, *The Primary Residence Exception: Legislative Proposals in the 111<sup>th</sup> Congress to Amend the Bankruptcy Code to Allow the Strip Down of Certain Home Mortgages*, by David H. Carpenter; and CRS Report RS22919, *Community Development Block Grants: Neighborhood Stabilization Program; Assistance to Communities Affected by Foreclosures*, by Eugene Boyd.

## Mortgage Origination Standards

All kinds of mortgages have exhibited increased default and foreclosure rates in recent years. However, many poorly performing mortgages exhibited increasingly complex or poorly understood features, including adjustable interest rates, interest-only periods, or negative amortization. While such features may be appropriate for some borrowers in some circumstances, many were made available more widely than was originally intended. In addition, many mortgages included features that some observers considered to be predatory, such as high prepayment penalties. While not all troubled mortgages exhibited these features, and not all mortgages with such features became troubled, some observers have pointed to some of these mortgage features as exacerbating the housing “bubble” and its subsequent collapse. As a result, some have called for standards related to mortgage origination, both to protect consumers and to help prevent future major losses to the financial system related to troubled mortgages.

The 111<sup>th</sup> Congress included a number of changes to mortgage origination standards and practices in its comprehensive financial reform legislation, the Dodd-Frank Act (P.L. 111-203). Among other actions, Dodd-Frank amended the Truth in Lending Act to set minimum standards for certain residential mortgages, restricted the use of prepayment penalties, imposed certain requirements and limitations on high-cost mortgages, and directed the Federal Reserve to issue regulations prohibiting mortgage originators from “steering” consumers to certain types of mortgages and prohibiting any practices related to residential mortgage lending that it deems to be “abusive, unfair, deceptive, [or] predatory.” The legislation also placed some limits on the ways in which mortgage originators may be compensated and required increased disclosures to consumers on a range of topics.

For additional information, see CRS Report R41350, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Issues and Summary*, coordinated by Baird Webel.

## Mortgage Documentation Issues

Over the course of 2010, several employees and individuals with power-of-attorney signing authority for major mortgage servicers, including GMAC Mortgage, J.P. Morgan Chase, and Wells Fargo, were deposed as part of foreclosure contests. These depositions raised concerns about what has been characterized as “robo-signing”—the practice of having a small number of individuals sign a large number of affidavits and other legal documents submitted to courts and other public authorities by mortgage companies to execute foreclosures. As a result of these depositions, many have questioned whether individuals who claimed in sworn affidavits to have personal knowledge of facts necessary to legally foreclose on a property actually had that knowledge; whether assignments and sales of interests in mortgages were properly executed; whether legal documents were properly notarized in accordance with state law; and, as a result, whether mortgage companies had met the necessary requisites to legally foreclose on certain properties.

These procedural defects have the potential to undermine the legitimacy of the foreclosure process and could result in judicial sanctions, civil penalties, and even criminal prosecutions. The servicers in question do not believe they have wrongfully foreclosed or evicted anyone, but rather that some of the paperwork that must be filed to complete a foreclosure in certain states may not have been properly reviewed or notarized by their employees. Whether or not homes have been wrongfully foreclosed was unknown as of the date of this report. It was also unclear whether the procedural problems masked substantive problems, such as a failure to properly transfer interests in a mortgage, thus calling into question true ownership of mortgages in certain instances. Even if substantive problems exist, it may be possible to rectify deficiencies in many, if not the vast majority of, cases to allow for the completion of foreclosures. Correcting these problems would come at a cost by potentially causing significant delays in the completion of the foreclosure process.

Many of the same documentation and proper transfer of ownership problems that may affect homeowners directly through the foreclosure process have the potential to cause even more significant legal and economic problems for the financial institutions involved. These problems include violations of securities laws for failing to accurately describe the mortgages underlying mortgage-backed securities (MBS) and violations of representations and warranties (e.g., regarding the quality of underwriting standards and other mortgage characteristics) provided for in the contracts that executed the sale of mortgage interests in the secondary market. These



problems have the potential to cost financial institutions billions of dollars in legal claims while also increasing market uncertainty, which comes with its own costs.<sup>7</sup>

These issues were the focus of several hearings in the 111<sup>th</sup> Congress,<sup>8</sup> during which several Members of Congress expressed concern that legal challenges to foreclosures and unresolved legal disputes regarding mortgages among financial institutions could delay recovery in the housing market and may create systemic risk to the financial system. However, the 111<sup>th</sup> Congress did not enact legislation addressing these potential risks.

For additional information, see CRS Report R41491, *“Robo-Signing” and Other Alleged Documentation Problems in Judicial and Nonjudicial Foreclosure Processes*, by David H. Carpenter.

## First-Time Homebuyer Tax Credits

In the face of falling home prices and an increasing inventory of unsold homes on the market, the 110<sup>th</sup> Congress enacted a tax credit for first-time homebuyers in the summer of 2008. Originally set to expire on July 1, 2009, the tax credit was for \$7,500 and was required to be repaid over a 15-year period. In the 111<sup>th</sup> Congress, the American Recovery and Reinvestment Act (ARRA, P.L. 111-5) increased the tax credit to \$8,000, removed the repayment requirement, and extended its expiration date to December 1, 2009. The Worker, Homeownership, and Business Assistance Act of 2009 (WHBAA, P.L. 111-92) further extended the tax credit to July 1, 2010, and expanded it to repeat homebuyers. Most recently, the Homebuyer Assistance and Improvement Act of 2010 (P.L. 111-198) gave homebuyers additional time to close and still be eligible for the credit. The tax credit was no longer available by the end of the 111<sup>th</sup> Congress.

For more information on the homebuyer tax credit, see CRS Report R40955, *An Economic Analysis of the Homebuyer Tax Credit*, by Mark P. Keightley.

## Federal Housing Administration (FHA) Reform

The Federal Housing Administration (FHA) insures mortgages made by private lenders that meet certain underwriting criteria, broadening the availability of mortgage credit to certain groups to whom it might not otherwise be available. Furthermore, FHA-insured mortgages generally require smaller downpayments than mortgages that are not federally insured or guaranteed. The relatively low downpayment feature makes it easier for certain populations, such as lower-income families and first-time homebuyers, to purchase homes.

In the housing boom of the mid-2000s, FHA's share of the mortgage market fell to under 2% of mortgage originations (as measured by dollar volume) at the end of 2006. After housing prices began to decline, however, FHA began playing a larger role in the mortgage market as lenders

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<sup>7</sup> Ed Reardon, Abhishek Mistry, John Sim, and Asif Sheikh, *Putbacks and foreclosures: fact vs. fiction*, J.P. Morgan Securitized Products Weekly; Laurie Goodman, Amherst Securities Group LP, Grais and Ellworth LLP hosted conference, *Robosigners and Other Servicing Failures: Protecting the Rights of RMBS Investors*, October 27, 2010, slide 10, available at <http://video.remotecounsel.com/mediasite/Viewer/?peid=12e6411377a744b9a9f2eefd1093871c1d>.

<sup>8</sup> For example, U.S. Congress, House Committee on Financial Services, Subcommittee on Housing and Community Opportunity, *Robo-Signing, Chain of Title, Loss Mitigation and Other Issues in Mortgage Servicing*, 111<sup>th</sup> Cong., 2<sup>nd</sup> sess., November 18, 2010; U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee on Housing, Transportation and Community Development, *Problems in Mortgage Servicing From Modification to Foreclosure, Part I*, 111<sup>th</sup> Cong., 2<sup>nd</sup> sess., November 16, 2010; and U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee on Housing, Transportation and Community Development, *Problems in Mortgage Servicing From Modification to Foreclosure, Part II*, 111<sup>th</sup> Cong., 2<sup>nd</sup> sess., December 1, 2010.



tightened their underwriting criteria and FHA-insured loans became the mortgage of choice for an increasing number of homebuyers. During FY2010, FHA guaranteed nearly 40% of home-purchase mortgages made during the year and served more than 1.1 million homebuyers. This was the second time that FHA has assisted more than 1 million homebuyers in a single year (the first was 1987).

At the same time that FHA's market share has been increasing, FHA has been facing increased mortgage defaults in recent years along with most other mortgage market participants. FHA therefore faces an increased tension between supporting the mortgage market by insuring new home loans and ensuring that it protects the stability of its insurance fund, the Mutual Mortgage Insurance Fund (MMIF). One indicator of the financial health of the MMIF, the capital reserve ratio, fell to 0.53% in FY2009, which is below a required level of 2% mandated in statute. (The capital ratio measures the amount of capital that FHA has on hand as a percentage of its insurance obligations, above and beyond the amount of capital set aside to cover expected losses on its current mortgage portfolio.) The capital reserve ratio increased modestly, to 0.59%, in FY2010, but remains below the mandated level of 2%. Furthermore, these levels do not include the Home Equity Conversion Mortgages (HECMs), which were added to the MMIF in FY2009. The FY2010 capital ratio for HECMs is -0.98%, and it brings the capital ratio for the MMIF to 0.50%.

One option for bringing more income to the MMIF and helping to raise the capital ratio would be to raise the upfront and annual insurance premiums that borrowers pay when obtaining FHA-insured loans. FHA announced that it intended to administratively raise the upfront premiums it charges, which were set below the maximum level allowed by statute, but because it had already been charging the maximum annual mortgage insurance premium allowed by law, it could not raise these annual premiums without congressional action. The 111<sup>th</sup> Congress enacted P.L. 111-229, which raised the maximum annual insurance premium and gave FHA the flexibility to increase these premiums along with the upfront premiums. The 111<sup>th</sup> Congress also considered broader FHA reforms, and one bill, the FHA Reform Act of 2010 (H.R. 5072), passed the House but was not considered on the floor of the Senate.

Since 2008, the maximum mortgage amounts that FHA can insure have been at temporarily increased levels. Some have argued that these limits should be decreased in order to limit FHA's involvement in the mortgage market to smaller-sized loans, but others have argued that reducing the limits before the market stabilizes could lead to a further softening in the market by reducing the amount of available credit. The 111<sup>th</sup> Congress acted to keep the maximum mortgage limits at their increased levels through FY2011.

For additional information, see CRS Report RS20530, *FHA-Insured Home Loans: An Overview*, by Katie Jones and CRS Report R40937, *The Federal Housing Administration (FHA) and Risky Lending*, by Darryl E. Getter.

## Housing for Low-Income Individuals and Families

### Appropriations for the Department of Housing and Urban Development

The majority of housing assistance programs for low-income individuals and families are funded through discretionary appropriations provided to HUD's budget in the annual appropriations process. In recent years, the cost of maintaining the Section 8 Housing Choice Voucher program, the largest program in HUD's budget, has been growing. This growth is due in part to increases in the cost of the rental vouchers themselves, which is driven by changes in private market rents and

the incomes of the low-income families who participate in the program. The growth is also due, in part, to the cost of additional vouchers created by Congress to serve additional families over the past several years. At the same time that the cost of maintaining the voucher program has been growing, the amount of funding offsets available within HUD's budget—primarily from recaptures of old funding in the Section 8 account and excess receipts from the Federal Housing Administration's insurance fund—has declined. These two dynamics—increased funding needs for Section 8 vouchers and decreases in offsetting receipts—have led to pressure to either increase the overall funding for HUD or make cuts to Section 8 vouchers or other programs. In the past several years, Congress has increased total funding for HUD, which has included increases for the Section 8 voucher program as well as other HUD programs.

The 111<sup>th</sup> Congress also enacted the American Recovery and Reinvestment Act (P.L. 111-5), aimed at stimulating the economy. This legislation included additional appropriations for a number of HUD programs, and is described in more detail in the "The American Recovery and Reinvestment Act (ARRA)" section of this report.

For additional information, see CRS Report R41233, *The Department of Housing and Urban Development (HUD): FY2011 Appropriations*, coordinated by Maggie McCarty.

## Section 8 Housing Choice Voucher Program Reform

For each of the past several years, Congress has considered reforms to the Section 8 Housing Choice Voucher program that are primarily aimed at streamlining the administration of the program. The Section 8 voucher program is HUD's largest direct housing assistance program for low-income families, both in terms of the number of families it serves (over 2 million) and the amount of money it costs (roughly \$18 billion in FY2010, nearly half of HUD's total appropriation). The program is administered at the local level, by public housing authorities (PHAs), and provides vouchers—portable rental subsidies—to very low-income families, which they can use to reduce their rents in the private market units of their choice (subject to certain cost limits). The program has been criticized for, among other issues, its administrative complexity and growing cost.

Recent reform bills have proposed changes to the income eligibility and rent determination process, designed to make it less complicated, and changes to the physical inspection process to give PHAs more options for reducing the frequency of inspections and increasing sanctions for failed inspections. Proposed legislation has also included changes to the formula by which voucher funding is allocated to PHAs. In recent years, annual appropriations laws have specified different formulas for allocating voucher funding; voucher reform legislation has sought to codify a permanent formula (although, even if enacted it could still be overridden in the appropriations acts). Finally, recent Section 8 voucher reform proposals have included modifications to and expansions of the Moving to Work demonstration, which permits a selected group of PHAs to seek waivers of most federal rules and regulations governing the Section 8 voucher program and the public housing program. The most recent voucher reform bill, the Section 8 Voucher Reform Act of 2009 (H.R. 3045), was reported out of the House Financial Services Committee, but was not considered on the House floor before the end of the 111<sup>th</sup> Congress.

For additional information, see CRS Report RL34002, *Section 8 Housing Choice Voucher Program: Issues and Reform Proposals*, by Maggie McCarty; and CRS Report RL32284, *An Overview of the Section 8 Housing Programs: Housing Choice Vouchers and Project-Based Rental Assistance*, by Maggie McCarty.

## **Public Housing Reform**

There are over 1 million units of public housing, owned by local public housing authorities, which receive annual operating and capital funding from Congress through HUD. Much of that housing stock is old and in need of capital repairs. While the results of an updated study have not yet been released, the last time the physical needs were assessed in the late 1990s, they were estimated at \$18 billion-\$20 billion. The amount Congress typically provides in annual appropriations for capital needs has not been sufficient to address that backlog. In response, PHAs have increasingly been utilizing other sources of financing, particularly private market loans, to meet the capital needs of their housing stock. However, there are limits on the extent to which PHAs can borrow funds; most notably, they are generally restricted by federal rules from mortgaging their public housing properties.

The Obama Administration's first budget requested funding and authority for a Transforming Rental Assistance initiative. Draft legislation to enact the initiative, called Preserving, Enhancing, and Transforming Rental Assistance (PETRA), was also released by the Administration. PETRA would have created a new form of rental assistance and allowed PHAs to convert their public housing contracts to these new rental assistance contracts. The rental assistance contracts would, presumably, pay higher subsidies than the PHA was receiving from its public housing operating funding. Further, by negating the old public housing contracts, the former public housing properties would no longer be encumbered by rules prohibiting them from being mortgaged.

While some aspects of the PETRA proposal were supported by PHA industry representatives, the proposal met with resistance from low-income housing advocates, who argued that it could result in the privatization of public housing, particularly if PHAs defaulted on the loans secured by their public housing properties.

The House Financial Services Committee reported a different public housing reform bill: H.R. 5814, the Public Housing Reinvestment and Tenant Protection Act of 2010. Rather than converting public housing to a new form of assistance, the bill would have authorized the Secretary of HUD to guarantee notes or other obligations issued by public housing agencies to finance the rehabilitation of public housing units. The bill was not enacted before the end of the 111<sup>th</sup> Congress.

## **Homelessness Assistance and Prevention**

Government assistance for housing for homeless individuals and families is provided primarily through the HUD Homeless Assistance Grants. In the 111<sup>th</sup> Congress, the law governing the Homeless Assistance Grants, Title IV of the McKinney-Vento Homeless Assistance Act, was amended in such a way that local communities will have more flexibility in administering the grants and in prioritizing who is served. The Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act was enacted as part of the Helping Families Save Their Homes Act of 2009 (P.L. 111-22) on May 20, 2010. The law took effect on November 20, 2010.

The issue of veterans experiencing homelessness has gained prominence in recent years. While little legislation to assist homeless veterans was enacted during the 111<sup>th</sup> Congress, a number of bills were introduced and considered. Congress also continued to support housing for homeless veterans by allocating \$75 million per year from FY2008 through FY2010 for Section 8 vouchers for homeless veterans. In addition, the Department of Veterans Affairs (VA) announced a plan to end veteran homelessness, resulting in additional funds being devoted to VA programs.

For additional information, see CRS Report RL30442, *Homelessness: Targeted Federal Programs and Recent Legislation*, coordinated by Libby Perl; and CRS Report RL34024, *Veterans and Homelessness*, by Libby Perl.

## Housing for the Elderly

The Section 202 Supportive Housing for the Elderly Program finances housing for households with a member age 62 or older. The program has been in existence since 1959, and many of the older housing developments may be in need of repair and modernization. Properties funded through approximately 1990 received direct government loans to develop the property. As a result, one way in which property owners may obtain funds for improving their properties is by paying off the original Section 202 loan and refinancing.

In the 111<sup>th</sup> Congress, the Section 202 Supportive Housing for the Elderly Act (P.L. 111-372) removed one of the impediments to the ability of owners of older Section 202 developments to refinance and make improvements to their properties. Under previous law, owners could only refinance into loans with lower interest rates and reduced debt service—the oldest Section 202 developments (those funded prior to 1974) were financed with low interest rate loans (approximately 3%), and it was difficult, if not impossible, to enter into a new loan with a lower interest rate and reduced debt service. These owners can now refinance as long as they address the physical needs of the property. In addition to P.L. 111-372's refinancing provisions, the new law authorized "Senior Preservation Rental Assistance" for use in cases of refinancing and established a new category of housing with services within the Assisted Living Conversion Program called "Service Enriched Housing."

For additional information, see CRS Report RL33508, *Section 202 and Other HUD Rental Housing Programs for Low-Income Elderly Residents*, by Libby Perl.

## Housing for Persons with Disabilities

The Section 811 Supportive Housing for Persons with Disabilities Act provides capital grants and rental assistance to nonprofit organizations to develop housing for persons with disabilities. Eligible housing includes units in multifamily housing developments and condominiums as well as group homes and independent living facilities. Criticisms of Section 811 housing include charges that the developments isolate individuals with disabilities away from housing for all members of the community, and that the Section 811 capital grants are insufficient to support entire developments without other streams of funding. In the 111<sup>th</sup> Congress, the Frank Melville Supportive Housing Investment Act (P.L. 111-374) contained provisions that attempted to address some of these criticisms.

Among the changes that P.L. 111-374 instituted are converting the source of funding for Section 811 tenant-based rental assistance to the Section 8 program; allowing Section 811 rental assistance to be used in conjunction with sources of financing other than Section 811 capital grants, including funds through the LIHTC and HOME program; decreasing the concentration of housing units for persons with disabilities by limiting the units in multifamily housing dedicated to persons with disabilities to 25% of the total (due to the need to finance the remaining 75% of units, this limitation could also encourage developers to use other funding sources to supplement the Section 811 funding); and delegating the processing of mixed finance developments to state housing finance agencies.

For additional information, see CRS Report RL34728, *Section 811 and Other HUD Housing Programs for Persons with Disabilities*, by Libby Perl.

## Funding for the National Housing Trust Fund

For several years, affordable housing advocates sought a national Affordable Housing Trust Fund that would provide a funding source specifically for housing for low-income households and that would not be subject to the annual appropriations process. A national Housing Trust Fund was created during the 110<sup>th</sup> Congress in the Housing and Economic Recovery Act of 2008 (P.L. 110-289). The Housing Trust Fund would provide annual grants to states primarily for funding activities related to providing rental housing to extremely low-income households. P.L. 110-289 funded the Housing Trust Fund through annual contributions from Fannie Mae and Freddie Mac, but when those entities were placed in government conservatorship in September 2008, the contributions to the Housing Trust Fund were suspended indefinitely, and the Housing Trust Fund was left without a source of funding.

The 111<sup>th</sup> Congress considered several bills that would have provided an initial amount of funding to capitalize the Housing Trust Fund; however, none of these bills included an ongoing, dedicated funding source. Most of the bills considered by the 111<sup>th</sup> Congress that would have provided an initial capitalization of the Housing Trust Fund would have appropriated an initial amount of \$1 billion, and some would have provided an additional \$65 million for rental assistance to be used in conjunction with Housing Trust Fund units. Two bills with initial funding for the Housing Trust Fund (H.R. 4213 and one version of H.R. 2847) were passed by the House. However, in both cases the funding for the Housing Trust Fund was not included in the enacted legislation. No funding for the Housing Trust Fund was provided by the end of the 111<sup>th</sup> Congress.

For additional information, see CRS Report R40781, *The Housing Trust Fund: Background and Issues*, by Katie Jones.

## Affordable Housing Preservation

The term “affordable housing preservation” refers to public policy efforts to maintain the affordability of rental properties financed or subsidized by HUD, the USDA Rural Housing Service (RHS), and/or Low Income Housing Tax Credits, but owned by private for-profit or nonprofit organizations. Beginning in the 1960s, owners entered into contracts with HUD (or RHS) to provide affordable housing for a particular period of time. In these transactions, the government provided mortgage financing assistance, rental assistance, or both forms of assistance to property owners in exchange for the owners’ agreement to maintain affordability.

A variety of circumstances may lead owners to stop participating in subsidized housing programs. In high-rent areas, owners may decide to pay off their assisted mortgages or choose not to renew affordability restrictions when mortgages mature or Section 8 rental-assistance contracts expire in order to convert a property to market-rate housing or sell the building at a profit. In cases where a property has been allowed to deteriorate significantly or the owner has violated federal program rules in other ways, HUD or the RHS may choose to end a contract with an owner. When the restrictions on these properties end, there is a risk that they will become unaffordable to low- and moderate-income tenants, and that those tenants will be displaced.

In the 111<sup>th</sup> Congress, the Housing Preservation and Tenant Protection Act (H.R. 4868), which was approved by the House Financial Services Committee, attempted to address some of the issues involved in preserving HUD-subsidized housing. For properties with maturing mortgages, the bill would have made grants or loans available to rehabilitate properties if owners so chose, and it would have extended enhanced voucher protections to unassisted tenants upon mortgage maturation. The bill would also have created a “Preservation Exchange Program,” through which HUD would have facilitated the transfer of a property with a maturing mortgage to a purchaser



who would maintain the affordability. In addition, H.R. 4868 would have established a form of right of first refusal/right of first purchase for HUD (or its assignee) whereby HUD could match the offer of a third party and purchase a property in order to maintain its affordability. The bill also included provisions regarding the refinancing of Section 202 loans similar to those that were enacted in The Section 202 Supportive Housing for the Elderly Act (P.L. 111-372), described in the “Housing for the Elderly” section of this report. H.R. 4868 was not enacted before the end of the 111<sup>th</sup> Congress.

For additional information, see CRS Report R41182, *Preservation of HUD-Assisted Housing*, by Maggie McCarty and Libby Perl.

## **Low-Income Housing Tax Credit (LIHTC) Prices**

The financial crisis and economic downturn adversely affected the Low-Income Housing Tax Credit (LIHTC) program. The program is one of the federal government’s primary policy tools for encouraging the development and rehabilitation of affordable rental housing. LIHTCs are nonrefundable tax credits, which are allocated to developers who typically sell them to private tax credit investors to raise capital (or equity) for real estate projects. After the economic downturn, large corporate LIHTC investors such as Fannie Mae, Freddie Mac, and Citibank reduced their demand for tax credits in the face of the low profit environment. The reduced demand led to a fall in the market value of the credits and forced LIHTC developers to secure additional sources of financing if they wished to undertake LIHTC projects. Some developers were unable to secure such financing, leading to concern over the ability of the LIHTC program to provide affordable rental housing.

To address the disruptions in the LIHTC market, the American Recovery and Reinvestment Act (ARRA, P.L. 111-5) created two programs: the Tax Credit Assistance Program (TCAP) and a temporary LIHTC-grant exchange program. Under the TCAP program, \$2 billion in grants were provided for tax credit developments that were underway but were facing financial shortfalls because of low LIHTC prices. The exchange program, commonly referred to as the Section 1602 LIHTC-grant exchange program (after Section 1602 of ARRA), allowed states to exchange portions of their 2008 and 2009 LIHTC allocations for grants. The grants were then to be given to developers to ensure construction of affordable rental housing. In the 111<sup>th</sup> Congress, several pieces of legislation that were at some point used as vehicles to extend expiring tax provisions contained a proposed one-year extension of the exchange. The grant exchange program, however, was not extended before the end of the 111<sup>th</sup> Congress.

For additional information, see CRS Report RS22389, *An Introduction to the Design of the Low-Income Housing Tax Credit*, by Mark P. Keightley; and CRS Report RS22917, *The Low-Income Housing Tax Credit Program: The Fixed Subsidy and Variable Rate*, by Mark P. Keightley.

## **Other Issues**

### **The American Recovery and Reinvestment Act (ARRA)**

In response to the severe economic recession, one of the first actions of the 111<sup>th</sup> Congress was enactment of an economic stimulus law, the American Recovery and Reinvestment Act of 2009 (P.L. 111-5). It provided almost \$800 billion through discretionary spending, mandatory spending, and revenue provisions designed to preserve and create jobs, assist those most affected by the recession, make investments in technology and infrastructure, and stabilize state and local budgets.

ARRA included several housing-related provisions. It provided just under \$13.7 billion in discretionary appropriations for HUD, some through existing HUD accounts or programs and some for new programs. For example, ARRA provided \$4 billion for public housing capital repairs, nearly double the amount the account had typically received in annual appropriations. It also provided \$1.5 billion for a new Homelessness Prevention and Rapid Rehousing Program, which allocated funds to states and local communities to be used for activities to prevent homelessness or to quickly find housing for those who have become homeless. This was the first time that significant HUD funding was devoted to preventing homelessness.

For more information about ARRA, see CRS Report R40537, *American Recovery and Reinvestment Act of 2009 (P.L. 111-5): Summary and Legislative History*, by Clinton T. Brass et al. For more information about the specific HUD funding provisions, see CRS Report RL34504, *The Department of Housing and Urban Development: FY2009 Appropriations*, by Maggie McCarty et al.

## Neighborhood Stabilization Program (NSP)

Since FY2008, Congress appropriated \$7 billion in Neighborhood Stabilization Program (NSP) funds to help state and local governments acquire, rehabilitate, and resell the growing inventory of abandoned and foreclosed homes precipitated by the home mortgage crisis.

The NSP was first authorized with the passage of the Housing and Economic Recovery Act of 2008 (P.L. 110-289). Using the framework of the Community Development Block Grant (CDBG) program, Congress appropriated \$3.92 billion to help 307 selected state and local governments acquire, rehabilitate, and resell abandoned and foreclosed properties. In 2009, Congress appropriated an additional \$2 billion for NSP-2 activities when ARRA (P.L. 111-5) was enacted. ARRA revised key elements of the program as a result of a number of issues raised during the early implementation of NSP-1. Funds appropriated under ARRA for NSP-2 were awarded competitively and included nonprofit and for-profit entities as direct recipients of funds when teamed with a state or local government. In 2010, Congress appropriated an additional \$1 billion for NSP-3 under the Dodd-Frank Act (P.L. 111-203). Each of the NSP rounds had specific deadlines that had to be met with respect to the obligation and expenditure of funds. Under NSP-1, grantees had 18 months from the date HUD signed their grant agreements to obligate these funds and four years to expend allocations. Under NSP-2, recipients were required to spend at least half of the funds within two years and 100% within three years of their allocation date. Finally, no obligation deadline was established in legislation for NSP-3; however, 50% of funds must be expended within two years and 100% within three years.

For additional information, see CRS Report RS22919, *Community Development Block Grants: Neighborhood Stabilization Program; Assistance to Communities Affected by Foreclosures*, by Eugene Boyd.

## Disaster Housing

The Federal Emergency Management Agency (FEMA) provides temporary housing assistance to disaster victims following an event declared a major disaster by the President. FEMA's authority to assist families in need of housing is derived from Section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288). This assistance can take several forms: repairs to make a home habitable, rental assistance, or direct housing (trailers or mobile homes). Assistance is generally provided for an 18-month period in accordance with the Stafford Act.



The unprecedented experience of addressing hundreds of thousands of disaster victims following Hurricanes Katrina and Rita and subsequent Gulf Coast storms challenged the traditional administration of the program and provoked interest in new partnerships and approaches in administering the various forms of disaster-related housing assistance. A prominent change was FEMA's effort in developing a partnership with HUD to provide longer-term housing for displaced families. Using HUD's expertise and the resources provided by the President's Disaster Relief Fund (DRF), disaster victims have received housing and case management services for an extended period after disasters. As a result of its experience with Katrina, FEMA has limited its use of manufactured housing and created safety standards for those that are purchased for use, and, as of the end of the 111<sup>th</sup> Congress, was reviewing (in partnership with HUD) a pilot program for safer and more affordable temporary housing units. The review is expected to be completed in 2011.

For more information, see CRS Report R40810, *FEMA Disaster Housing: From Sheltering to Permanent Housing*, by Francis X. McCarthy.

## **Appendix. Housing Legislation in the 111<sup>th</sup> Congress**

The following list presents legislation relating to housing and community development considered by the 111<sup>th</sup> Congress. The list is limited to legislation that was enacted into public law or passed by the House of Representatives or the Senate. Legislation focuses primarily on the programs of the Department of Housing and Urban Development, the Rural Housing Service of the Department of Agriculture, and issues relating to housing finance and tax. The list does not include legislation related to military housing or housing assistance for disabled veterans provided through the Department of Veterans Affairs.

### **Public Laws**

American Recovery and Reinvestment Act of 2009 (H.R. 1, P.L. 111-5, February 17, 2009)

Omnibus Appropriations Act, 2009 (H.R. 1105, P.L. 111-8, March 11, 2009)

Fraud Enforcement and Recovery Act of 2009 (S. 386, P.L. 111-21, May 20, 2009)

Helping Families Save Their Homes Act of 2009 (S. 896, P.L. 111-22, May 20, 2009)

Legislative Branch Appropriations Act, 2010 (H.R. 2918, P.L. 111-68, October 1, 2009)

Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010 (H.R. 2997, P.L. 111-80, October 21, 2009)

Worker, Homeownership, and Business Assistance Act of 2009 (H.R. 3548, P.L. 111-92, November 6, 2009)

Consolidated Appropriations Act, 2010 (H.R. 3288, P.L. 111-117, December 16, 2009)

Homebuyer Assistance and Improvement Act of 2010 (H.R. 5623, P.L. 111-198, July 2, 2010)

Caregivers and Veterans Omnibus Health Services Act of 2010 (S. 1963, P.L. 111-163, May 5, 2010)

Dodd-Frank Wall Street Reform and Consumer Protection Act (H.R. 4173, P.L. 111-203, July 21, 2010)

General and Special Risk Insurance Funds Availability Act of 2010 (H.R. 5872, P.L. 111-228, August 11, 2010)

To increase the flexibility of the Secretary of Housing and Urban Development with respect to the amount of premiums charged for FHA single family housing mortgage insurance, and for other purposes (H.R. 5981, P.L. 111-229, August 11, 2010)

Continuing Appropriations Act, 2011 (H.R. 3081, P.L. 111-242, September 30, 2010)

Indian Veterans Housing Opportunity Act of 2010 (H.R. 3553, P.L. 111-269, October 12, 2010)

Veterans' Benefits Act of 2010 (H.R. 3219, P.L. 111-275, October 13, 2010)

Helping Heroes Keep Their Homes Act of 2010 (S. 4058, P.L. 111-346, December 29, 2011)

Section 202 Supportive Housing for the Elderly Act of 2009 (S. 118, P.L. 111-372, January 4, 2011)

Frank Melville Supportive Housing Investment Act of 2009 (S. 1481, P.L. 111-374, January 4, 2011)

## **Bills Passed by Only One Chamber**

### **House-Passed Bills**

Family Self-Sufficiency Act of 2009 (H.R. 46)

CJ's Home Protection Act of 2009 (H.R. 320)

TARP Reform and Accountability Act of 2009 (H.R. 384)

Homes for Heroes Act of 2009 (H.R. 403)

Helping Families Save Their Homes Act of 2009 (H.R. 1106)

Homeless Veterans Reintegration Program Reauthorization Act of 2009 (H.R. 1171)

Frank Melville Supportive Housing Investment Act of 2009 (H.R. 1675)

Mortgage Reform and Anti-Predatory Lending Act (H.R. 1728)

Rural Homeowners Protection Act of 2009 (H.R. 2034)

American Clean Energy and Security Act of 2009 (H.R. 2454)

Neighborhood Preservation Act (H.R. 2529)

21<sup>st</sup> Century FHA Housing Act of 2009 (H.R. 3146)

FHA Multifamily Loan Limit Adjustment Act of 2009 (H.R. 3527)

Helping Heroes Keep Their Homes Act of 2010 (H.R. 3976)

End Veteran Homelessness Act of 2010 (H.R. 4810)

Rural Housing Preservation and Stabilization Act of 2010 (H.R. 5017)

FHA Reform Act of 2010 (H.R. 5072)

Flood Insurance Reform Priorities Act of 2010 (H.R. 5114)

HELP Veterans Act of 2010 (H.R. 5360)

Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2011 (H.R. 5850)

Wounded Warrior and Military Survivor Housing Assistance Act of 2010 (H.R. 6058)

### **Senate-Passed Bills**

FEMA Accountability Act of 2009 (S. 713)

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## Acknowledgments

Bruce E. Foote, former CRS Analyst in Housing Policy, was an original co-author of this report.

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